



The Comptroller General  
of the United States

Washington, D.C. 20548

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## Decision

Matter of:                    Sanford's Domestic/International Trade  
File:                         B-226605  
Date:                         July 10, 1987

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### DIGEST

1. Noncompliance with solicitation provisions requiring prices to be based on current published price list and substantial sales at those prices warrant rejection of an offer since the procuring agency needs this information to establish that price of item offered to be included on Federal Supply Schedule is most advantageous to the government.
2. Protest of alleged solicitation deficiencies is untimely where not filed with General Accounting Office or contracting agency prior to closing date for receipt of offers.
3. Where solicitation does not provide for special consideration of disabled veteran-owned firms, there is no basis for giving preferential treatment to such firms in award process.

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### DECISION

Sanford's Domestic/International Trade protests the rejection of its offer submitted in response to solicitation No. M3-03-86, issued by the Veterans Administration Marketing Center (VA), Hines Illinois, to obtain multiyear, multiple-award Federal Supply Schedule (FSS) contracts to supply medical equipment and supplies. The VA rejected Sanford's offer of a blood/fluid warmer because Sanford failed to submit a current published commercial price list, and had no prior commercial sales of this item. Sanford disputes the grounds of rejection and further contends that as a disabled veteran-owned firm, it should have been afforded special consideration for award.

We deny the protest in part and dismiss it in part.

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The solicitation included several clauses pertaining to the submission of pricing data for the purpose of negotiating prices for the awarded items. One clause specified that concessions in prices afforded the government shall be based on current published commercial price lists showing "established catalog or market prices," to be submitted with each offer. The clause warned that special price lists printed for the purpose of this offer and showing only net prices to the government would not be accepted. Another clause provided that the prices for items to be awarded under the solicitation would be negotiated on the basis of discounts from the offeror's established catalog or market prices. Finally, the solicitation required offerors to certify that their prices are based on established catalog or market prices of commercial items and that substantial quantities of the items have been sold to the general public at those prices.

In its timely offer of a Flo-Tem II brand blood warmer, Sanford certified that it was a disabled veteran-owned business and also stated that it was an authorized dealer of the Flo-Tem II blood warmer. Sanford offered this item to the government at a 2 percent discount from its net prices set forth on a hand-printed price list, dated January 21, 1987, included with its offer. Sanford also indicated that it had no sales for the preceding three fiscal years and, more specifically, no prior sales of the Flo-Tem II blood warmer.

The VA rejected Sanford's offer based on its failure to furnish a published commercial price list and the lack of any prior sales of the items. Sanford protested this determination to the contracting officer, furnished the contracting officer with a list of government and non-government purchases of the Flo-Tem II blood warmer from other firms, and asked for special consideration as a disabled veteran-owned firm. The contracting officer rejected this appeal. Sanford now protests to our Office on the same grounds.

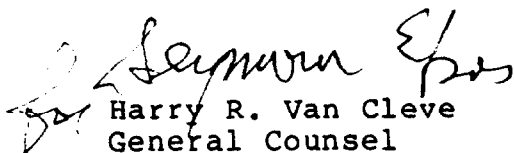
The purpose of the standard clause requiring the submission of current published commercial price lists essentially is to ensure that offered prices for items listed on the FSS are reasonable, that is, not excessive. See Cascade Pacific International, B-220616, Dec. 10, 1985, 85-2 CPD ¶ 646. The price list requirement meets this aim by assuring that the prices on which offered discounts are based have been tested in the commercial market place, where the prices necessarily were subjected to, and presumably tempered by, the forces of supply and demand. The additional requirement that offerors certify to substantial commercial sales of the item goes the further step of assuring that the item prices have not

merely been offered to the commercial public -- leaving open the possibility that the prices were rejected by the marketplace -- but that the prices have been reasonable enough to generate sales of the items. Without a commercial price history, Sanford's offered discounts were meaningless, and it was not possible for the VA to determine whether the prices were in fact advantageous to the government.

To the extent Sanford challenges the inclusion of the provisions here in the solicitation, the protest is untimely. Under our Bid Protest Regulations, protests based on alleged deficiencies on the face of a solicitation must be filed with our Office or the contracting agency prior to the deadline for receipt of offers. 4 C.F.R. § 21.2(a)(1) (1986). As Sanford did not object until after its offer had been rejected, this aspect of the protest will not be considered.

There is no basis for according Sanford special consideration based on its status as a disabled veteran-owned firm during the evaluation of offers. Where, as here, a solicitation does not provide for special consideration of firms based on some special status, the agency has no legal basis upon which to give preferential treatment to such firms. See generally Photonics Technology, Inc., B-200482, Apr. 15, 1981, 81-1 CPD ¶ 288.

The protest is denied in part and dismissed in part.

  
Harry R. Van Cleve  
General Counsel